

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

EARL G. WILLIAMS, #710963

V.

LT. THOMAS DAY

§  
§  
§  
§  
§


CIVIL ACTION NO. G-03-221

**ORDER OF DISMISSAL**

Before the Court for its Order of Acceptance is a Report and Recommendation of the United States Magistrate Judge, entered on July 25, 2005, which recommends that the instant case be dismissed with prejudice. Plaintiff has filed objections to the Report and Recommendation, reiterating already pleaded claims regarding Lt. Day's actions when closing the dayroom door. However, Plaintiff's claims, even if true, fail to rise to the level of a constitutional violation and fail to surmount Defendant's entitlement to qualified immunity.

After *de novo* review pursuant to 28 U.S.C. §636 (b)(1)(C), this Court is of the opinion that the Report and Recommendation of the Magistrate Judge should be, and it is hereby, **ACCEPTED** in its entirety and incorporated by reference herein. It is the **ORDER** of this Court that Defendant's Motion to Dismiss (Instrument no. 19) is **GRANTED** and this cause is **DISMISSED with prejudice for failure to state a claim for which relief can be granted and as frivolous.**

**DONE** at Galveston, Texas, this the 25th day of August, 2005.

  
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Samuel B. Kent  
United States District Judge